

Indiana Public Defender Commission Meeting Minutes

April 11, 2007

Chairman Norman Lefstein called the meeting to order at 2:30 p.m. Commission members attending were Les Duval, Bettye Lou Jerrel, Hon. Daniel Donahue, Monica Foster, Rep. Bob Kuzman (by telephone), and Rep. Amos Thomas. Also attending was Larry Landis, Director of the Indiana Public Defender Council, and Deborah Neal, Staff Counsel for the Commission. Members not attending were Susan Carpenter, Sen. Timothy Lanane and Sen. Joseph Zakas.

Other interested parties in attendance were David Happe, Madison County Public Defender Administrator, Pat Biggs, Floyd County Chief Public Defender, and Neil Weisman of St. Joseph County.

Chairman Lefstein opened the meeting by introducing Representative Amos Thomas as the new member of the Commission, replacing Representative Ralph Foley. Les Duval moved that the Commission adopt a resolution thanking Rep. Ralph Foley for all his years of service to the Public Defender Commission. Rep. Foley was a member for thirteen years, beginning in 1994. Judge Donohue seconded the motion for the resolution, and the motion passed unanimously.

Changes to the Commission and its staff were discussed. Chairman Lefstein congratulated Bettye Lou Jerrel for being reappointed by Chief Justice Randall T. Shepard to another four-year term as a member of the Public Defender Commission. Judge Donohue announced he is retiring from his position as Clark Circuit Court Judge in June of 2008, and would no longer serve as a Commission member when his term expires in February of that year. Chairman Lefstein informed the members that Deborah Neal has been handling the duties of staff counsel since that position was vacated in January of this year. Chairman Lefstein reported on his discussions with other members regarding the position of counsel to the Public Defender Commission, and it was decided that Ms. Neal be staff counsel. He also reported that an advertisement has been placed in the Indiana Lawyer seeking resumes for an assistant staff counsel. Commissioner Lefstein asked for volunteers to serve with him on a committee to interview prospective candidates for the counsel position. Bettye Lou Jerrel offered to serve on the committee. Susan Carpenter, who has been a member of an interviewing committee in the past, will be contacted to determine if she will also agree to serve. Chairman Lefstein added Larry Landis to this committee. Mr. Landis has also participated in staff interviews in the past.

1. **Meeting Minutes:** Chairman Lefstein presented minutes from the December 14, 2006 Public Defender Commission meeting for approval. He asked for approval of the minutes with one amendment – adding the word “many” before states in the fourth paragraph of page 5. Bettye Lou Jerrel moved for approval of the December 14, 2006 meeting minutes as amended, and Les Duval seconded the motion. The vote was unanimous in favor of approval.

2. **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein reported there has been no response from Chief Justice Shepard regarding the Commission’s suggestions for membership of the task force to study indigent defense in Indiana. Chairman Lefstein stated he would write to the Chief Justice thanking him for his support with the legislature on behalf of the Commission’s budget requests and also inquiring about the status of the task force. Bettye Lou Jerrel stated she believed it was the wrong time to pressure the Chief Justice concerning the task force due to the legislature still being in session, and that the letter should only address the Commission’s thanks for his efforts on our behalf.

Judge Donohue asked how the study of indigent defense in Indiana would be conducted. Chairman Lefstein said that most likely an outside consultant will be hired to gather data, and that there will be several hearings around the state to allow for public input. Chairman Lefstein reiterated his desire to include an inquiry about the status of the task force in the thank-you letter to the Chief Justice for fear this study will not get off the ground. Monica Foster moved that the thank-you letter be sent to the Chief Justice with mention of the task force, and Les Duval seconded the motion, adding that he does not think the general assembly relates to the status of the task force. The motion passed.

3. **Annual Report for 2005-2006.** Chairman Lefstein reported that the 2005-2006 Annual Report, if approved by the Commission, is ready to be electronically distributed. He said he would prepare a cover memorandum to accompany the report. Judge Donohue moved to approve the 2005-2006 Annual Report and Les Duval seconded the motion. The motion passed unanimously.

4. **Financial Status of the Public Defense Fund.** Representative Bob Kuzman (by telephone) updated the Commission on the status of the proposed budget in the general assembly. He reported that the Ways and Means Committee recommends that the Indiana Public Defender Commission's request of \$6 million for FY 07-08, and \$7 million for FY 08-09 be approved. Representative Kuzman said the House of Representatives passed the budget with the requested increases for the Fund; however, the Senate removed the increases from the budget. Chairman Lefstein asked if there was anything the Commission could do to influence the outcome of the budget in favor of the Fund. Rep. Kuzman said that Larry Landis should continue to work with Ways and Means Chairman, Bill Crawford, and that counties should be encouraged to contact their representatives. Larry Landis added that the Indiana Public Defender Council is working with the chief public defenders and county councils to contact their legislators and stress the importance of the proposed budget increases. Mr. Landis reported that the Indiana Association of Counties also is lobbying in the state senate on behalf of the counties in the Fund for the budget increases requested for FY07-08 and FY 08-09.

Chairman Lefstein reported that due to the present financial status of the Public Defense Fund it was necessary to prorate the non-capital requests for the 4th quarter of 2006. The requests would be prorated at 18.3%. Chairman Lefstein stated that the requests for reimbursement for the 1st quarter of 2007 considered at the June 27, 2007 meeting should be paid at the full 40% after the distribution to the Fund on July 1, 2007.

5. **Claims for 50% Reimbursement in Capital Cases:** The Commission addressed claims for 50% reimbursement in capital cases as follows:

INDIANA PUBLIC DEFENDER COMMISSION			
Reimbursement Requests in Capital Cases			
April 11, 2007			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$3,133.18
Fulton	Baker 1	*	\$2,528.28
	Baker 2	*	\$2,213.22
	Baker 3		\$2,972.90
	Baker 4		\$4,316.60
	Baker 5		\$4,474.78

	Baker 6		\$2,972.39
	Baker 7		\$4,117.40
	Baker 8		\$2,558.40
	Baker 9		\$1,550.00
	Baker 10		\$1,200.00
Lake	Aki-Khuam		\$27,158.76
Marion	Allen		\$25,517.53
	Turner		\$5,346.83
	Voss	*	\$2,678.46
Parke	Cottrell		\$11,795.43
	Cottrell 2		\$2,604.23
	Cottrell 3		\$9,549.23
Pike	Harbison		\$2,930.50
Spencer	Ward		\$7,573.41
Tippecanoe	Gauvin	*	\$21,922.25
Vanderburgh	Wilkes	*	\$26,502.37
Vigo	Walker		\$1,369.35
	Walker 2	*	\$8,370.73
	Walker 3		\$363.73
	Walker 4		\$1,270.60
	Walker 5		\$6,110.21
TOTAL			\$193,100.77

BAKER request 34 days past 120-day deadline. Auditor letter attached.

WALKER 2 subtracted court expense of \$386.55 for transcription.

GAUVIN had \$2,470.85 request that was court's expense. Amt. subtracted from request.

VOSS request was \$3,300.90. Eleven days late on 120-d deadline for \$622.44

Deborah Neal asked for discussion on whether the Commission approves of capital expenses for non-attorneys attending death penalty seminars, and capital defense attorneys attending a seminar on jury voir dire in death penalty cases in Colorado at the end of April, 2007. Monica Foster vouched for the seminar on jury selection stating it was an excellent seminar. Larry Landis said the Indiana Public Defender Council, which sponsors death penalty seminars, are encouraging non-attorney members of the capital defense team to attend these training programs. Judge Donohue pointed out that the statute governing reimbursement of capital expenses says the Fund will pay for defense expenditures, and that if the presiding judge has allowed the expense, then the Commission should approve reimbursement.

Deborah Neal reported that the claims in *State v. Baker*, from Parke County, had not been timely filed, but that a letter from the auditor explaining the delay was included with the Parke County requests. Ms. Neal explained that Parke County was unaware of the 120-day deadline for filing capital claims, or that the claims had not been submitted to the Commission. The auditor said there was internal confusion between the court and the auditor's office concerning the claims, and that they would be timely filed in the future.

Ms. Neal reported that Marion County's claim in *State v. Voss* was not timely filed. Marion County was given notice and opportunity to respond to the Commission regarding the reasons for the late filing, but did not file a response. Judge Donohue moved that the Commission approve payment of the capital claims in the amount of \$193,100.77, which included the Parke County claims for the *Baker* case, excluded the \$622.44 payment to Marion County for the late claim in *State v. Holland*, and excluded other noted non-defense expenses. Representative Amos Thomas seconded the motion. Judge Donohue abstained from voting on the claims submitted by Clark County; Monica Foster abstained from voting on the claims in *State v. Allen*; and, Bettye Lou Jerrel abstained from voting on the capital claims from Vanderburgh County. The motion to pay capital claims in the amount of \$193,100.77 passed.

6. **Response to 90-Day Notice Letters:** Chairman Lefstein stated that the letters sent to the ten counties that were out of compliance with Commission Standards on attorneys' maximum caseloads had the affect the Commission hoped they would. Each county responded with a program to get back into Commission Standards. Chairman Lefstein asked if the Commission was comfortable with processing claims for the ten counties that are out of compliance under the condition they show progress on bringing their attorneys' caseloads into compliance. Bettye Lou Jerrel stated that the 90-Day Notice letter was excellent and had been needed for a long time. She said results of the notice should begin to show in future quarters. Mrs. Jerrel then moved to accept the responses for coming into compliance with Commission standards submitted by the ten counties, continue to reimburse their expenses, and monitor each county with respect to their proposed solution. Monica Foster seconded the motion. The motion passed.

7. **Claims for 40% Reimbursement in Non-Capital Cases:** Before claims were reviewed, Larry Landis reported that Henry county has voted to get out of the public defense program, and not make future requests for reimbursement on their non-capital claims. Mr. Landis reported that Henry County does not want to pay their Chief Public Defender the salary that would be substantially equal to the Henry County Prosecutor's salary, or approximately \$105,000 annually. He said the Henry County Council thought that the defense costs of being in the Public Defender Fund program were too much, and that it was not worth the money.

Chairman Lefstein said that due to the 18.3% prorating of counties' requests for reimbursement, he is recommending that the checks (upon approval for payment) not be issued to the counties until a letter explaining the prorated amount and the result of the budget request in the state legislature can be prepared and sent to the counties. Judge Donohue made a motion to approve the non-capital requests for reimbursement totaling \$1,453,555.89. Monica Foster seconded the motion. The motion was passed.

Non-capital claims for the 4th^d quarter of 2006 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION

4th Qtr (October 1, 2006 - December 31, 2006) Requests for Reimbursements in Non-Capital Cases

4/11/2007

County	Total Expenditure	Adjustment	Eligible Expenditure	40% Reimbursement	18.3% Prorated Reimbursement	Adjustment %
ADAMS	\$64,140.18	\$15,630.80	\$48,509.38	\$19,403.75	\$8,877.22	24%
ALLEN	\$651,640.14	\$38,350.38	\$613,289.76	\$245,315.90	\$112,232.03	6%
BENTON	\$12,057.46	\$1,230.35	\$10,827.11	\$4,330.84	\$1,981.36	10%

BLACKFORD	\$22,220.72	\$6,060.20	\$16,160.52	\$6,464.21	\$2,957.38	27%
CLARK	\$98,437.41	\$17,249.33	\$81,188.08	\$32,475.23	\$14,857.42	18%
DECATUR	\$31,805.13	\$11,421.73	\$20,383.40	\$8,153.36	\$3,730.16	36%
FAYETTE	\$118,305.00	\$22,927.33	\$95,377.67	\$38,151.07	\$17,454.11	19%
FLOYD	\$136,081.17	\$24,386.92	\$111,694.25	\$44,677.70	\$20,440.05	18%
FOUNTAIN	\$29,085.31	\$6,463.40	\$22,621.91	\$9,048.76	\$4,139.81	22%
FULTON	\$49,257.24	\$14,953.09	\$34,304.15	\$13,721.66	\$6,277.66	30%
GRANT	\$144,989.00	\$14,445.00	\$130,544.00	\$52,217.60	\$23,889.55	10%
GREENE	\$55,854.49	\$10,661.52	\$45,192.97	\$18,077.19	\$8,270.31	19%
HANCOCK	\$123,208.04	\$37,282.83	\$85,925.21	\$34,370.08	\$15,724.31	30%
HENRY	\$88,828.31	\$15,211.26	\$73,617.05	\$29,446.82	\$13,471.92	17%
JASPER	\$50,736.44	\$16,912.15	\$33,824.29	\$13,529.72	\$6,189.85	33%
JAY	\$38,051.62	\$13,127.81	\$24,923.81	\$9,969.52	\$4,561.06	35%
JENNINGS	\$79,156.51	\$36,071.32	\$43,085.19	\$17,234.08	\$7,884.59	46%
KNOX	\$150,511.89	\$40,136.50	\$110,375.39	\$44,150.16	\$20,198.70	27%
KOSCIUSKO	\$80,923.99	\$18,929.59	\$61,994.40	\$24,797.76	\$11,344.98	23%
LAKE	\$963,158.18	\$1,618.75	\$961,539.43	\$384,615.77	\$175,961.72	0%
LAPORTE	\$126,955.60	\$17,656.08	\$109,299.52	\$43,719.81	\$20,001.81	14%
MADISON	\$406,451.06	\$32,415.69	\$374,035.37	\$149,614.15	\$68,448.47	8%
MARION	\$3,806,509.44	\$760,474.28	\$3,046,035.16	\$1,218,414.06	\$557,424.43	20%
MONROE	\$270,509.97	\$79,982.52	\$190,527.45	\$76,210.98	\$34,866.52	30%
MONTGOMERY	\$83,531.02	\$22,181.56	\$61,349.46	\$24,539.78	\$11,226.95	27%
NOBLE	\$72,208.23	\$17,319.74	\$54,888.49	\$21,955.40	\$10,044.59	24%
OHIO	\$12,422.50	\$3,311.00	\$9,111.50	\$3,644.60	\$1,667.40	27%
ORANGE	\$27,389.07	\$6,902.94	\$20,486.13	\$8,194.45	\$3,748.96	25%
PARKE	\$30,182.59	\$7,972.76	\$22,209.83	\$8,883.93	\$4,064.40	26%
PIKE	\$52,006.16	\$20,598.21	\$31,407.95	\$12,563.18	\$5,747.65	40%
PULASKI	\$61,346.27	\$19,765.20	\$41,581.07	\$16,632.43	\$7,609.34	32%
RUSH	\$33,415.34	\$8,817.94	\$24,597.40	\$9,838.96	\$4,501.32	26%
SCOTT	\$64,538.71	\$20,136.08	\$44,402.63	\$17,761.05	\$8,125.68	31%
SHELBY	\$73,364.34	\$8,421.68	\$64,942.66	\$25,977.06	\$11,884.51	11%
SPENCER	\$16,556.45	\$4,143.75	\$12,412.70	\$4,965.08	\$2,271.52	25%
STEUBEN	\$50,914.93	\$8,561.72	\$42,353.21	\$16,941.28	\$7,750.64	17%
SULLIVAN	\$30,831.04	\$10,391.85	\$20,439.19	\$8,175.68	\$3,740.37	34%
SWITZERLAND	\$66,744.34	\$30,081.96	\$36,662.38	\$14,664.95	\$6,709.22	45%
TIPPECANOE	\$410,539.46	\$93,277.42	\$317,262.04	\$126,904.82	\$58,058.95	23%
VANDEBURGH	\$474,525.78	\$90,929.45	\$383,596.33	\$153,438.53	\$70,198.13	19%
VERMILLION	\$23,076.72	\$7,552.38	\$15,524.34	\$6,209.74	\$2,840.95	33%

VIGO	\$338,110.31	\$88,692.05	\$249,418.26	\$99,767.30	\$45,643.54	26%
WARREN	\$11,032.89	\$6,636.39	\$4,396.50	\$1,758.60	\$804.56	60%
WASHINGTON	\$153,202.22	\$46,052.00	\$107,150.22	\$42,860.09	\$19,608.49	30%
WHITLEY	\$39,734.53	\$6,273.87	\$33,460.66	\$13,384.26	\$6,123.30	16%
TOTAL	\$9,724,547.20	\$1,781,618.78	\$7,942,928.42	\$3,177,171.35	\$1,453,555.89	18%

8. **Senior Judges Serving on Public Defender Boards (Rush County):** Chairman Lefstein reported to the Commission that he had received a letter from Judge David Northrum, Rush County Circuit Court, requesting that Senior Judge Harcourt be allowed to serve on the local Public Defender Board. IC 33-40-7-3(b), which governs the establishment of county public defender boards, states, "... a member may not be a city, town or county attorney, a law enforcement officer, a judge, or a court employee." Larry Landis explained that when the statute was enacted the position of senior judges had not been established. Monica Foster said that as long as Judge Harcourt was not sitting on the bench in Rush County, there is no problem. Judge Donohue made a motion specific to Rush County, stating that Judge Harcourt may sit on the Rush County Public Defender Board so long as she is not actively serving as judge in Rush County. Bettye Lou Jerrel seconded the motion. The motion passed.

9. **Comprehensive Plans: Madison, St. Joseph and Wabash Counties:**

Madison County

David Happe, administrator for the Madison County public defender program, explained the amendments to the Madison County comprehensive plan. Originally, the comprehensive plan assigned the courts in Madison County their own public defense attorney. This made it difficult to control the caseloads of these attorneys, or substitute other public defense counsel when a caseload exceeded the Commission's standards. Mr. Happe reported to the Commission that the amended comprehensive plan directs the chief administrative public defender to monitor the caseloads and to assign cases on a rotating basis. He said the judges were reluctant to let go of their assigned public defender, however, the 90-Day Notice letter changed their thinking. Monica Foster made a motion to approve the Amended Comprehensive Plan submitted by Madison County; Les Duval seconded the motion. The motion passed unanimously.

St. Joseph County

Chairman Lefstein presented St. Joseph County's comprehensive plan for approval. He explained that the plan contain a two-year phase-in period allowing St. Joseph County public defense attorneys time to come into compliance with the Commission's standards. Chairman Lefstein also explained that the public defense attorneys in St. Joseph County, according to the comprehensive plan, would be part-time attorneys with a 55% caseload due to the amount of salary being paid to each public defense attorney. Mr. Neil Weisman from South Bend was present and spoke on behalf of St. Joseph County's comprehensive plan. Monica Foster then made a motion to approve the St. Joseph County comprehensive plan and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Wabash County

Chairman Lefstein presented the Wabash County comprehensive plan to the Commission. He stated that it was a good plan and there were no issues outstanding. Bettye Lou Jerrel made a motion to approve Wabash County's comprehensive plan, and Les Duvall seconded the motion. The motion passed unanimously.

10. **Policy Matters:**

- A. **Guideline re: Assignments Reported on Rolling 12-Month Period:** The proposed rolling 12-month guideline reads as follows: “New case assignments to each indigent defense attorney shall be reported by counties over a 12-month period, based on a rolling year, for purposes of substantial compliance with caseload maximums allowed by Standard J.” Chairman Lefstein asked if there were any objections to including in the Guidelines the rolling 12-month period as written. No objections were expressed.
- B. **Standard H re: Minimum \$60 Hourly Rate for Assigned Counsel:** Tabled.
- C. **Counties Reporting Attorneys’ Caseload Status as 75%, or 80% of a Full-Time Caseload:** Vigo County reports its public defense attorneys’ maximum yearly caseloads as 80% of the full-time public defender maximum caseload figure outlined in the Commission’s Standard J. Vigo County has included this “80% of full-time caseload” provision in their comprehensive plan, which was approved by the Public Defender Commission in 1999. Floyd County reports its public defense attorneys’ maximum yearly caseloads as 75% of a full-time public defender’s maximums listed in Standard J. Pat Biggs, Floyd County Chief Public Defender, was present at the meeting and explained that Floyd County has had 75% maximums on a full-time caseload since the county began their program. He said that the decision to maximize caseloads at 75% of full-time caseloads listed in Standard J was based upon the amount of the salaries paid to the public defense attorneys in Floyd County. Chairman Lefstein stated that philosophically the Commission could have 50 counties deciding what percentage of a full-time caseload their public defense attorneys could handle in a 12-month period. Monica Foster asked Mr. Biggs how he monitored the performance of the public defense attorneys regarding the amount of time spent on indigent defense cases. Mr. Biggs said that he gets feedback from the clients. If he hears of any attorney not devoting enough time to the public defense practice, he cuts them loose. As Chief Public Defender, Biggs explained the monitoring of attorney performance was an important part of his job. He said that jail inmates are primary sources of information on the public defense attorneys. There was no objection voiced from the Commission members concerning the caseload maximums used in Floyd or Vigo County.
- D. **Length of Compliance Phase-In Plans (Tippecanoe County):** Tabled.
- E. **Contract Attorneys Who Become Assigned Counsel:** Tabled.
- F. **Adequate vs. Inadequate Staff of Public Defense Attorneys:** Tabled.

11. **Meeting Dates for 2nd and 3rd quarters of 2007:** Chairman Lefstein asked Deborah Neal to send out an inquiry for proposed dates of the quarterly meetings.

Adjournment: Judge Donohue moved to adjourn the meeting and Bettye Lou Jerrel seconded the motion. The motion passed and the meeting adjourned at 5:16 p.m.

Judge Daniel Donohue, Interim Chairman

Date